

## The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSH AUXIER & COLEEN AUXIER, )  
Plaintiffs, ) No. 12-cv-0288 MJP  
v. ) DEFENDANT SUTTELL &  
FREDERICK J. HANNA & ASSOCIATES, )  
P.C.; SUTTELL & HAMMER, P.S.; ) HAMMER, P.S.'S ANSWER  
Defendants, )  
FIA CARD SERVICES, N.A.; )  
Co-Defendant. )

Defendant Suttell & Hammer, P.S. (“Suttell”) answers plaintiffs’ Complaint for  
(1) Violation of Fair Debt Collections Practices Act 15 USC 1692 et. Seq. (FDCPA); and  
(2) Violation of Fair Credit Reporting Act 15 USC 1681 et seq. (FCRA), filed on or about  
February 21, 2012 (the “Complaint”) as follows:

1. Answering the allegations that are directed to Suttell in the unnumbered paragraphs at pages 2 and 3 of the Complaint, the allegations state legal conclusions to which no response is required. To the extent a response is required, Suttell denies that in engaged in

**ANSWER TO COMPLAINT OF SUTTELL & HAMMER  
(12-cv-0288 MJP) — 1  
DWT 19128161v2 0050033-000146**

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1 any “wrongful actions,” and denies that the debt at issue is not the plaintiff Coleen Auxier’s.  
2 Except as expressly denied, Suttell is without knowledge or information sufficient to form a  
3 belief as to the truth or falsity of the allegations, and therefore denies them.

4       2. Answering the allegations in paragraph 1.1 of the Complaint, Suttell does not  
5 contest jurisdiction or venue.

6       3. Answering the allegations in paragraph 1.2 of the Complaint, Suttell is without  
7 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
8 and therefore denies them.

9       4. Answering the allegations in paragraph 1.3 of the Complaint, Suttell is without  
10 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
11 and therefore denies them.

12       5. Answering the allegations in paragraph 1.4 of the Complaint, Suttell is without  
13 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
14 and therefore denies them.

15       6. Answering the allegations in paragraph 1.5 of the Complaint, Suttell admits that  
16 it is a law firm and a professional service corporation, but denies that its primary office location  
17 is Mercer Island, Washington. Except as expressly admitted or denied, Suttell is without  
18 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining  
19 allegations, and therefore denies them.

20       7. Answering the allegations in paragraph 1.6 of the Complaint, Suttell admits that  
21 FIA is a national bank. Except as expressly admitted, Suttell is without knowledge or  
22 information sufficient to form a belief as to the truth or falsity of the remaining allegations, and  
23 therefore denies them.

1       8. Answering the allegations in paragraph 2.1 of the Complaint, Suttell denies that  
2 the plaintiffs are the victims of identity theft with respect to the subject account. Except as  
3 expressly denied, Suttell is without knowledge or information sufficient to form a belief as to  
4 the truth or falsity of the remaining allegations, and therefore denies them.

5       9. Answering the allegations in paragraph 2.2 of the Complaint, Suttell is without  
6 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
7 and therefore denies them.

8       10. Answering the allegations in paragraph 2.3 of the Complaint, Suttell is without  
9 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
10 and therefore denies them.

11       11. Answering the allegations in paragraph 2.4 of the Complaint, Suttell admits that  
12 it sent a letter to plaintiff Coleen Auxier. Except as expressly admitted, Suttell is without  
13 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining  
14 allegations, and therefore denies them.

15       12. Answering the allegations in paragraph 2.5 of the Complaint, Suttell admits that  
16 it received a letter on or about October 13, 2010. Except as expressly admitted, Suttell denies  
17 the remaining allegations in paragraph 2.5 of the Complaint.

18       13. Answering the allegations in paragraph 2.6 of the Complaint, Suttell is without  
19 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
20 and therefore denies them.

21       14. Answering the allegations in paragraph 2.7 of the Complaint, Suttell admits that  
22 it served the plaintiff Coleen Auxier with process. Except as expressly admitted, Suttell denies  
23 the remaining allegations in paragraph 2.7 of the Complaint.

1       15. Answering the allegations in paragraph 2.8 of the Complaint, Suttell admits that  
2 plaintiff Coleen Auxier demanded that Suttell file suit. Except as expressly admitted, Suttell  
3 denies the remaining allegations in paragraph 2.8 of the Complaint.

4       16. Suttell denies the allegations in paragraph 2.9 of the Complaint.

5       17. Answering the allegations in paragraph 2.10 of the Complaint, Suttell admits  
6 that it filed a complaint against the plaintiff Coleen Auxier on or about September 20, 2011.  
7 Except as expressly admitted, Suttell denies the remaining allegations in paragraph 2.10 of the  
8 Complaint.

9       18. Answering the allegations in paragraph 2.11 of the Complaint, Suttell admits  
10 that the plaintiff Coleen Auxier filed a motion to dismiss, which was denied. Except as  
11 expressly admitted, Suttell denies the remaining allegations in paragraph 2.11 of the Complaint.

12       19. Answering the allegations in paragraph 3.1.1 of the Complaint, Suttell  
13 incorporates its responses to paragraphs 1.1 through 2.11 as if set forth fully herein.

14       20. Answering the allegations in paragraph 3.1.2 of the Complaint, Suttell is without  
15 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
16 and therefore denies them.

17       21. Answering the allegations in paragraph 3.1.3 of the Complaint, Suttell is without  
18 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
19 and therefore denies them.

20       22. Answering the allegations in paragraph 3.1.4 of the Complaint, Suttell is without  
21 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,  
22 and therefore denies them.

23       23. Suttell denies the allegations in paragraph 3.1.5 of the Complaint.

24. Answering the allegations in paragraph 3.1.6 of the Complaint, Suttell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies them.

25. Answering the allegations in paragraph 3.2.1 of the Complaint, Suttell incorporates its responses to paragraphs 1.1 through 2.11 as if set forth fully herein.

26. Suttell denies the allegations in paragraph 3.2.2 of the Complaint.

27. Suttell denies the allegations in paragraph 3.2.3 of the Complaint.

28. Answering the allegations in paragraph 3.3.1 of the Complaint, Suttell incorporates its responses to paragraphs 1.1 through 2.11 as if set forth fully herein.

29. Answering the allegations in paragraph 3.3.2 of the Complaint, Suttell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies them.

30. Answering the allegations in paragraphs 3.3.3 of the Complaint, Suttell is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies them.

31. Suttell denies that plaintiffs are entitled to the relief requested in paragraphs 4.1 through 4.8 of the Complaint.

32. Any allegations not admitted or otherwise addressed above are hereby denied.

## DEFENSES

1. The Complaint, and each of its counts, fails to state a claim upon which relief can be granted against Suttell.

2. The plaintiffs' claims are barred by the applicable limitations periods.

3. If there was any violation of the Fair Debt Collection Practices Act (which is denied), it was the result of a bona fide error.

4. Plaintiffs' claims are barred or precluded by the doctrines of collateral estoppel and/or res judicata.

5. Plaintiff's claims are barred and/or the Court lacks jurisdiction under the *Rooker-Feldman* doctrine.

6. Plaintiff Josh Auxier lacks standing and has failed to state a claim.

7. Suttell reserves the right to assert additional defenses that may become known through discovery or further investigation.

WHEREFORE defendant Suttell prays for the following relief:

- A. That judgment be entered in favor of Suttell;
  - B. That Plaintiffs' Complaint and each of its counts be dismissed with prejudice;
  - C. That Suttell be awarded costs and fees to the extent permitted by law; and
  - D. That the Court award such other relief as is just and proper under the

### circumstances

DATED this 16th day of March, 2012.

Davis Wright Tremaine LLP  
Attorneys for Defendants Suttell & Hammer P.S.

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## ANSWER TO COMPLAINT OF SUTTELL & HAMMER

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1  
2                   CERTIFICATE OF SERVICE  
3

4                   I hereby certify that I electronically filed the foregoing with the Clerk of the Court using  
5  
6 the CM/ECF system; and

7                   I hereby certify that I have mailed by United States Postal Service the document to the  
8 following non CM/ECF participants:

9  
10                  Josh Auxier  
11                  Coleen Auxier  
12                  19210 3RD AVE S  
13                  DES MOINES, WA 98148  
14                  206-551-1786  
15                  Email: joshandcoleen@gmail.com

16                  I certify under penalty of perjury that the foregoing is true and correct. Executed at Seattle,  
17 Washington this 16th day of March, 2012.

18                  Davis Wright Tremaine LLP  
19                  Attorneys for Defendants Suttell & Hammer P.S.

20                  By s/ Brad Fisher  
21                  Brad Fisher, WSBA #19895